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EXAMINER

JALLOW, EYAMINDAE CHOSSAN

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TIMO JAKOB

Appeal 2014-009257
Application 12/994,387¹
Technology Center 3700

Before STEFAN STAICOVICI, ANNETTE R. REIMERS, and
SEAN P. O'HANLON, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Timo Jakob (Appellant) appeals under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 2–4, 7, 8, 11, 12, and 17–21.² Appellant's representative presented oral argument on January 19, 2017. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

¹ According to Appellant, KHS GmbH is the real party in interest. Appeal Br. 1 (filed Mar. 31, 2014).

² Claims 1, 5, 6, 9, 10, and 13–16 are canceled. *See* Appellant's Amendment 4–6 (filed June 25, 2013).

SUMMARY OF DECISION

We REVERSE.

INVENTION

Appellant's invention relates to "a closing machine for closing containers with closures." Spec. 1, ll. 14–15 (filed Mar. 28, 2014).

Claim 7, the sole independent claim, is representative of the claimed invention and reads as follows:

7. An apparatus for closing containers with closures, said apparatus comprising a closing machine, said closing machine comprising a rotor that can be rotated about a vertical machine axis, a container carrier formed on the circumference of said rotor for engaging a container, a sterile chamber formed on said rotor, and into which extend container mouths of containers that are to be closed, each container hanging from and being retained by a corresponding container carrier, said sterile chamber being delimited from surroundings thereof by walls or wall sections, a plurality of closing stations formed on a circumference of said rotor, each of said closing stations comprising a bellows that extends by a variable amount into said sterile chamber, said bellows defining an interior volume that remains outside said sterile chamber, a closing tool disposed in said interior volume of said bellows, said closing tool being constructed to apply a closure to a container by welding or sealing, said closing tool having functional elements, which are arranged outside said sterile chamber, and a part that cooperates with a structure selected from the group consisting of said container and a closure, said closing tool comprising a conductive structure selected from the group consisting of a passive component and a shaped part, wherein only said bellows extends into said sterile chamber during operation of said closing tool, and a device arranged outside said sterile chamber for producing energy for welding or sealing.

REJECTIONS

The following rejections are before us for review:

- I. The Examiner rejected claims 2–4, 7, 8, 11, 18, and 21 under 35 U.S.C. § 103(a) as being unpatentable over Tomba (EP 1 468 959 A2, pub. Oct. 20, 2004), Nervo (EP 1 262 445 A1, pub. Dec. 4, 2002), and Stark (US 5,653,091, iss. Aug. 5, 1997).
- II. The Examiner rejected claims 12 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Tomba, Nervo, Stark, and Leatherman (US 3,706,176, iss. Dec. 19, 1972).
- III. The Examiner rejected claim 19 under 35 U.S.C. § 103(a) as being unpatentable over Tomba, Nervo, Stark, and Anderson (US 3,690,088, iss. Sept. 12, 1972).
- IV. The Examiner rejected claim 20 under 35 U.S.C. § 103(a) as being unpatentable over Tomba, Nervo, Stark, and Clemons (US 2004/0261262 A1, pub. Dec. 30, 2004).

ANALYSIS

Rejection I

The Examiner finds that the combined teachings of Tomba and Nervo disclose most of the limitations of independent claim 7, but fail to disclose “a bellows having an interior volume through which a closing tool will enter the sterile chamber.” Final Act. 2–3 (citing Tomba, para. 14, Fig. 1) (transmitted Aug. 30, 2013). Nonetheless, the Examiner finds that Stark discloses a flexible bellows 14 that is arranged in a gas tight manner about filler pipe 5. *Id.* at 3. The Examiner concludes that:

It would have been obvious to a person having ordinary skill in the art, at the time of the invention, to provide the closing tools taught by Tomba with the flexible bellows taught by Stark in order to provide the closing tools a way to enter the sterile chamber without bringing contaminants into the sterile environment.

Id.

Appellant argues, *inter alia*, that the Examiner's rejection "appears to have been arrived at by reading Applicant's own disclosure." Appeal Br. 7. According to Appellant, "in *Stark*, there is no concept of a tool entering a sterile chamber through the bellows"; rather, the tool "is completely inside the sterile chamber and never actually leaves it." *Id.*

The reasoning provided by the Examiner—"to provide the closing tools a way to enter the sterile chamber without bringing contaminants into the sterile environment"—does not support the conclusion of obviousness because the Examiner has not shown the relevance of that reasoning in the context of Tomba's closing machine. Stark discloses the use of bellows 14 to direct sterile air along stationary filler pipe 5 to sterilize the inside of package 1, and the outside of lamp 7 and lamp housing 6. Stark, col. 5, l. 55—col. 6, l. 8, Fig. 1. Tomba discloses a sterile room C1, "wherein the upper surface . . . consists of [a] plate supporting . . . closing heads (D), and where the lower surface . . . consists of the plate supporting the bottle neck." Tomba, col. 8, ll. 29–33, Fig. 1. Hence, closing head D and neck of bottle H of Tomba's closing machine are already contained within the sterile environment of room C1, and, thus, Tomba's closing machine does not require the addition of a bellows seal, as taught by Stark, to direct sterile air to their respective locations. We note that Tomba's closing machine already

includes pipes E, F for directing sterile air into sterile chamber C1. *See id.* at Fig. 1. Furthermore, as the Examiner has not provided any findings that Tomba's closing head D moves in and out of sterile room C1, the Examiner has not persuasively shown a problem with sealing closing head D or a need to avoid "bringing contaminants into the sterile environment" of room C1.

We thus agree with Appellant that the reason proffered by the Examiner, i.e., "to provide the closing tools a way to enter the sterile chamber without bringing contaminants into the sterile environment," appears to come from Appellant's Specification, which states that "[t]he aim of the invention is to provide a closing machine that . . . reduces the risk of contamination." Spec. 2, ll. 16–21; *see also id.* at 4, ll. 19–21 (describing "bellows-like gasket **13**" that seals "[t]he area through which the induction seal[er] **12.1** passes through the wall section **6**"). *See* Appeal Br. 7. Without a persuasive articulated rationale based on rational underpinnings for modifying the closing machine of Tomba, using the bellows of Stark, as proposed, the Examiner's rejection appears to be the result of hindsight analysis. *See In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (cited with approval in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)).

The Examiner's use of Nervo's disclosure does not remedy the deficiency of the Examiner's combination of the teachings of Tomba and Stark. *See* Final Act. 3. Accordingly, for the foregoing reasons, we do not sustain the rejection under 35 U.S.C. § 103(a) of claims 2–4, 7, 8, 11, 18, and 21 as unpatentable over Tomba, Nervo, and Stark.

Rejections II–IV

The Examiner’s use of the disclosures of each of Leatherman, Anderson, and Clemons does not remedy the deficiency of the Examiner’s combination of the teachings of Tomba, Nervo, and Stark. *See* Final Act. 5–6.

Therefore, for the reasons discussed *supra*, we also do not sustain the rejections under 35 U.S.C. § 103(a) of claims 12 and 17 as unpatentable over Tomba, Nervo, Stark, and Leatherman; of claim 19 as unpatentable over Tomba, Nervo, Stark, and Anderson; and of claim 20 unpatentable over Tomba, Nervo, Stark, and Clemons.

SUMMARY

The Examiner’s decision to reject claims 2–4, 7, 8, 11, 12, and 17–21 is reversed.

REVERSED